

2016-1123

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

PERSONAL AUDIO, LLC,
Appellant,

v.

ELECTRONIC FRONTIER FOUNDATION,
Appellee,

MOTION FOR LEAVE TO FILE A BRIEF OF AMICI CURIAE

Pursuant to Federal Rules of Appellate Procedure Rules 29(a) and (b) and Federal Circuit Rule 29, Unified Patents Inc. (“Unified”) and Askeladden L.L.C. (“Askeladden”) move for leave to file a brief as *amici curiae*. This Motion is accompanied by Unified’s and Askeladden’s proposed *amicus curiae* brief. Unified and Askeladden have no stake in either of the parties to this litigation. Appellee Electronic Frontier Foundation (“EFF”) has consented to the filing of Unified’s and Askeladden’s *amicus* brief, but Appellant Personal Audio, LLC (“Personal Audio”) has not.

Unified’s and Askeladden’s interests in this case originated with the Court’s *sua sponte* order of July 22, 2016, requesting briefing on the issue of whether EFF

has standing to participate in this appeal under *Consumer Watchdog v. Wisconsin Alumni Research Foundation*, 753 F.3d 1258 (Fed. Cir. 2014).

Unified is a for-profit, member-based organization whose goal is to reduce the number of non-practicing-entity (“NPE”) assertions in specific technology areas that are of interest to its members. Unified collects annual fees from its members to fund its activities, but it acts independently in deciding whether and how to challenge a given NPE patent. Askeladden is an education, information and advocacy organization dedicated to improving the understanding, use, reliability and quality of patents pertinent to financial services and related industries. Askeladden is a wholly owned subsidiary of The Clearing Housing Payments Company L.L.C., which is the oldest banking association and payments company in the United States. Askeladden seeks to improve the United States patent system by, among other things, submitting amicus curiae briefs on important issues of intellectual property law and challenging patents through the IPR process that it believes are unpatentable and may be used to inhibit innovation in the financial services industry.

Unified and Askeladden seek to file an *amicus* brief to assist this Court in deciding whether *Consumer Watchdog* is applicable to the facts of this case and whether EFF has standing to present arguments as an appellee in this case. In addition, Unified and Askeladden wish to provide a broader context for the

standing question, which may be helpful to the Court in crafting a ruling on EFF's standing in this particular case. Specifically, as Unified and Askeladden will explain, there are many organizations and individuals that may, for myriad reasons, choose to undertake the painstaking and costly task of instituting an IPR to challenge the patentability of a U.S. patent despite having no direct exposure to the patent. Not all of these entities are similarly situated with EFF or with the non-profit charity at issue in *Consumer Watchdog*. Given this varied landscape and the still evolving nature of the IPR field, Unified and Askeladden will respectfully urge the Court to refrain from creating any bright-line rules or tests regarding standing that might prove unfair or unworkable in future cases.

Notably, neither party to this appeal briefed the issue of standing until they were directed to do so in the Court's *sua sponte* order of July 22, 2016. Accordingly, Unified and Askeladden had no reason to file an *amicus* brief until after that Order issued. Because of these unique circumstances, and for the reasons stated above, Unified and Askeladden respectfully request that this Court grant their Motion for Leave to File a Brief of Amici Curiae.

August 1, 2016

Respectfully submitted,

/s/ James R. Barney

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CERTIFICATE OF INTEREST

Counsel for Amicus Curiae Unified Patents Inc. certifies the following (use "None" if applicable; use extra sheets if necessary):

1. The full name of every party represented by me is:

Unified Patents Inc.

2. Name of the Real Party in interest (Please only include any real party in interest NOT identified in Question 3) represented by me is:

None

3. Parent corporations and any publicly held companies that own 10 % or more of the stock of the party represented by me are:

None

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court (and who have not or will not enter an appearance in this case) are:

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2. Name of the Real Party in interest (Please only include any real party in interest NOT identified in Question 3) represented by me is:

None

3. Parent corporations and any publicly held companies that own 10 % or more of the stock of the party represented by me are:

Askeladden L.L.C. is a wholly owned subsidiary of The Clearing House Payments Company L.L.C. No corporation or publicly held company owns 10 percent or more of The Clearing House Payments Company L.L.C.

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court (and who have not or will not enter an appearance in this case) are:

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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing MOTION FOR LEAVE TO FILE A BRIEF OF AMICI CURIAE on counsel of record on August 1, 2016, by Electronic Means (the Court's CM/ECF).

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